



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/159942

PRELIMINARY RECITALS

Pursuant to a petition filed August 19, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on September 18, 2014, at Kenosha, Wisconsin.

The issue for determination is whether Wisconsin IRIS (IRIS) was correct in its decision to dis-enroll the Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Carrie Haugen, Quality Service Specialist
IRIS Consultant Agency
1 South Pickney Street, Suite 320
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner has been a participant in the IRIS program since June 15, 2011. (Exhibit I)
3. Jennifer Schroeder has been Petitioner's IRIS Consultant (IC) since August 2013. (Testimony of Ms. Schroeder)

4. On March 23, 2014, Ms. Schroeder attempted to make phone contact with the Petitioner, without success.
5. On April 17, 2014 and May 2, 2014, Ms. Schroeder made additional attempts to contact the Petitioner, but Petitioner's phone was disconnected. (Exhibit D)
6. On May 9, 2014, Ms. Schroeder again attempted, without success to contact Petitioner at her number and her mother's number. (Exhibit D)
7. On May 18, 2014, Ms. Schroder left another message with an unidentified female at Petitioner's mother's phone number. (Exhibit D)
8. On May 20, 2014, Ms. Schroeder attempted to contact Petitioner through 6 people listed on Petitioner's back up plan and was only able to leave a message for Petitioner with one person, a J.G. (Exhibit D)
9. On May 21, 2014, Ms. Schroeder attempted to contact the Petitioner through her mother and son, without success. (Exhibit D)
10. On May 30, 2014, IRIS sent the Petitioner a letter indicating that her IC had been trying to contact her without success and to contact her IC within 10 days. (Exhibit E)
11. On June 9, 2014, IRIS sent a letter to the Petitioner indicating that the agency has been trying to contact her without success and that if she did not contact the agency, she would not be allowed to continue in the program. (Exhibit E)
12. Petitioner had no contact with her IC between February 17/18, 2014 and September 8, 2014. (Testimony of Ms. Schroder)
13. On July 3, 2014, IRIS sent the Petitioner a notice indicating that effective July 18, 2014, it was going to involuntarily dis-enroll the Petitioner, because she was not meeting communication requirements with IRIS. (Exhibit B)
14. Petitioner filed an appeal that was received by the Division of Hearings and Appeals on August 19, 2014. (Exhibit 1)
15. On August 22, 2014, IRIS received Petitioner's appeal information from the Division of Hearings and Appeals and updated her phone number and address. (Exhibit D)
16. On August 26, 2014, IRIS sent the Petitioner a letter indicating that it was going to give her, "an opportunity to comply with IRIS program requirements so you will not be disenrolled." The letter further stated that the Petitioner needed to contact her IRIS consultant (IC) with her current address and phone number and that she needed to complete her annual Individual Service and Support Plan (ISSP) by September 8, 2014. (Exhibit C)
17. On September 8, 2014, Petitioner called Ms. Schroeder, asking to reschedule the appointment, but was persuaded to keep the appointment. (Testimony of Ms. Schroeder)
18. Ms. Schroeder met with the Petitioner at the Petitioner's mother's residence. (Testimony of Petitioner and Ms. Schroeder)
19. During the meeting with Ms. Schroeder, the Petitioner stated that she was tired and asked Ms. Schroeder to leave. Consequently, they were not able to complete the portions of the ISSP that establish the Petitioner's desired outcomes and care plans. (Testimony of Ms. Schroeder)

DISCUSSION

The Petitioner has been receiving medical benefits under IRIS, which stands for Include, Respect, I Self-Direct. This program is a fee-for-service alternative to Family Care, PACE, or Partnership for individuals requesting a long-term care support program in Family Care counties. *Medicaid Eligibility Handbook*, § 37.1.1.

Federal regulations require states to assure the Centers for Medicare and Medicaid Services (CMS) that, “necessary safeguards have been taken to protect the health and welfare of individuals furnished services under the program and to assure the financial accountability for funds expended for self-directed services.” 42 CFR §441.464(a)

In furtherance of this goal, Individual Service and Support Plans, must be reviewed every 12 months, or more frequently, if necessary. (See Exhibit M)

States may involuntarily disenroll participants, but they must, “specify the conditions under which a participant may be involuntarily disenrolled from the self-directed PAS option” and the CMS must, “approve the State’s conditions under which a participant may be involuntarily disenrolled.” 42 CFR §441.458(a) and (b).

In accordance with the aforementioned Federal Regulations, the Department of Health Services, created IRIS policy 3.03.1, which state that Participants may be involuntarily disenrolled when the participant’s health and safety are at risk. (See Exhibit L)

It is the contention of the IRIS program that Petitioner needed to be terminated from the program because she has not kept in contact with her IRIS consultant and as such, the IRIS program has no way of maintaining her health and safety in the program.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving a termination of services, Wisconsin IRIS has the initial burden to show that Petitioner is no longer eligible for IRIS services.

Because IRIS is a self-directed Medicaid Waiver program, it is imperative to the health and safety of the participants that they keep in contact with their IRIS consultants to make sure they are taking good care of themselves and that their health care needs are being well met. It is impossible for IRIS satisfy this responsibility, if participants fail to keep their consultants apprised of their circumstances.

Ms. Schroeder gave credible testimony that the Petitioner did have contact with her for almost seven months between February 2014 and September 2014. The Petitioner didn’t even advise her consultant of the fact that her phone was disconnected.

It should be noted that IRIS gave the Petitioner one last chance to establish effective communication with her IC. IRIS’s letter dated September 8, 2014, made it very clear that the Petitioner needed to meet with her IC and complete her ISSP by September 8th. While Petitioner did meet with her IC on the very last day of the deadline, she did not complete the ISSP.

Under such circumstances, it is found that Petitioner’s health and safety would be at risk, if she continues in the IRIS program and that Wisconsin IRIS was correct in its decision to involuntarily disenroll the Petitioner.

Petitioner argues that she should be continued in the IRIS program, because she thought she met the requirements of the program, by meeting her IC on September 8, 2014. Petitioner asserts that this is all a big misunderstanding. It is difficult to believe the Petitioner was unaware for seven months of the need to contact her IRIS consultant.

If Petitioner would like to continue in a waiver program, she can apply for the Family Care program by calling the Kenosha County Aging and Disability Resource Center at () .

If she would like to apply, in person, they are located at .

CONCLUSIONS OF LAW

Wisconsin IRIS (IRIS) was correct in its decision to dis-enroll the Petitioner.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

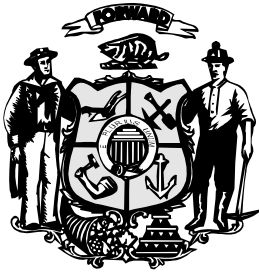
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of October, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 21, 2014.

Bureau of Long-Term Support